APPEAL NO. 031132
FILED JUNE 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 22, 2003. With regard to the disputed issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 13, 2001, with a nine percent impairment rating (IR) as assessed by the designated doctor whose report was not contrary to the great weight of other medical evidence. Another issue regarding the average weekly wage was resolved by stipulation.

The claimant appeals the hearing officer's decision basically on two grounds: (1) that he did not timely (within seven days) receive the designated doctor's report as required by Texas Workers' Compensation Commission (Commission) rules; and (2) that the designated doctor impermissibly assigned a retrospective date of MMI. The respondent (self-insured) responds urging affirmance.

DECISION

Affirmed.

We note that the claimant elected to proceed pro se, specifically rejecting the assistance of an ombudsman.

The parties stipulated that the claimant sustained a compensable (low back lifting) injury on _____. The claimant's treating doctor was Dr G. The hearing officer, in his Statement of the Evidence outlines the claimant's course of treatment. The self-insured's required medical examination (RME) doctor, in a report dated July 5, 2001, certified MMI on July 5, 2001, with a seven percent IR, based on Section (II)(C) of Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), assessed range of motion (ROM) within normal limits, and no neurological or other deficit were present. Dr. G, in a progress note dated August 13, 2001, noted that a discogram had been denied and concluded that the claimant "can appeal the decision of his [RME], otherwise he is at this [MMI]." The claimant disputed the RME assessment and Dr. C was appointed as the (first) designated doctor. In a report dated September 20, 2001, Dr. C certified that the claimant was not at MMI and should have a discogram "so that further treatment planning could be pursued."

What happened to Dr. C is not evident. It is undisputed that the claimant received no further medical treatment between September 2001, and April 2002, when the claimant was sent to Dr. T, the second designated doctor. In a Report of Medical Evaluation (TWCC-69) and narrative, both dated April 11, 2002, Dr. T certified MMI on August 13, 2001, (the date of the treating doctor's note after the RME) with a nine

percent IR based on seven percent impairment from Section (II) (C) Table 49 of the AMA Guides and 2% impairment for loss of ROM, with no sensory or motor deficits. The claimant alleges that Dr. T's report was not received by the self-insured until June of 2002, and was not received by the Commission until July 1, 2002, and that he did not receive the report until February 24, 2003.

The claimant cites Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(d)(2) (Rule 130.1(d)(2)) as requiring a medical report to be filed with the Commission, the claimant, and the carrier (or in this case, the self-insured) no later than 7 working days after the certifying examination or the receipt of all required medical information. While Dr. T may not have timely filed his report, that does not invalidate the report, but only makes the doctor subject to an administrative penalty. *See* Section 415.0035. The claimant further contends that the failure to send the report to the treating doctor violated his "right to DUE PROCESS." (Emphasis in original). The Appeals Panel has no jurisdiction to deal with constitutional issues and we only note that neither the 1989 Act, nor Commission rules provide for the invalidation of a medical report for failure to strictly adhere to the administrative rules.

The claimant further cites Rule 130.1(b)(4)(c) to say that the certifying doctor shall assign a specific date at which MMI was reached and that:

> (i) The date of MMI may not be prospective or conditional.
>
> (ii) The date of MMI may be retrospective to the date of the certifying exam. (Emphasis added).

The claimant correctly cites the rule, but incorrectly contends that the rule does not allow for a retrospective date of MMI. Further, the Appeals Panel has held that a designated doctor can appropriately consider and rely on tests, examinations, data, and medical reports performed or authored by others in arriving at his or her final evaluation in a given case. Texas Workers' Compensation Commission Appeal No. 92275, decided on August 11, 1992; Texas Workers' Compensation Commission Appeal No. 941142, decided on October 6, 1994.

We have reviewed the complained-of determinations and conclude that the hearing officer did not err in his determinations and that those determinations are supported by the evidence. We conclude that the hearing officer's decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Veronica Lopez-Ruberto
Appeals Judge